

Land Use Law in Oregon

by Niko Hoskins
HC 441: Willamette River Health
Clark Honors College, University of Oregon
June 3, 2004

Introduction

A quick survey of public opinion on the Willamette River returns remarks like “polluted,” “filthy” and “sad.” The Willamette, once a clean asset treasured by the majority of Willamette Basin residents, has reached this low after experiencing a landmark cleanup in the 1970s (Starbird). Under the guidance of Governor Tom McCall, the Oregon legislature passed bills between 1969 and 1973 that promoted the conservation of waterways and wetlands and mandated that land use plans be implemented. They would prove to be landmark laws as they were the first of their type to be passed in the United States. The most important of these, Senate Bill 100, was passed the same year Governor McCall delivered a memorable opening address to the legislature in 1973.

There is a shameless threat to our environment and to the whole quality of life, an unfettered despoiling of the land. Sagebrush subdivisions, coastal “condomania,” and the ravenous rampage of suburbia in the Willamette Valley all threaten to mock Oregon's status as the environmental model for the nation. We are dismayed that we have not stopped misuse of the land, our most valuable finite natural resource.

We are in dire need of a state land-use policy, new subdivision laws, and new standards for planning and zoning by cities and counties. The interests of Oregon for today and in the future must be protected from grasping wastrels of the land. We must respect another truism: that unlimited and unregulated growth leads inexorably to a lowered quality of life. (qtd. in DLCDC History)

Unfortunately, passing the landmark bill would only prove to be the first step. Subsequent attacks on SB 100 followed in 1976, 1978 and 1982 but were defeated each time in the legislature. Other important acts passed during McCall's governorship include his Executive Order 67-2, later known as the Willamette Greenway Act; Senate Bill 10, a law mandating that statewide planning standards be implemented; the Scenic Waterways Act, which was pushed for and voted in by the Oregon public; and Governor McCall's and Henry Richmond's founding of the 1000 Friends of Oregon, a citizen organization formed to monitor the implementation of SB 100 (Serrill). Through the rest of the 1970s and the 1980s, SB 100 came under numerous attacks but was upheld each time by the legislature while numerous agencies, commissions and committees were created, per the intent of SB 100. Out of this came the Department of Land Conservation and Development (DLCD) and the Land Conservation and Development Commission (LCDC); these two groups would jointly author Oregon's Statewide Planning Goals. These goals would provide the mission statement for future land use laws.

The 1990s saw a change in the leanings of the legislature, which passed many anti-land use and anti-environmental bills, although all direct attacks on SB 100 were quelled either in legislature or by Governor Kitzhaber. Instead, funding has gradually been scaled back on various environmental programs while rewards for polluters for obeying pollution laws have been written into law. The 2003 legislature and Governor Kulongoski have left a lot to be desired after the governor signed five of the six anti-environment bills that reached his desk, according to the Oregon League of Conservation Voters (OLCV).

A Call for Help

Governor Tom McCall had based much of his 1966 gubernatorial campaign on his environmentalist stance and was strongly in favor of land use and zoning laws (“Governor McCall...”). In 1967, Governor McCall issued Executive Order 67-2, also known as the Willamette Greenway Proposal, which essentially made cleaning up the Willamette the state’s top priority. The Willamette Greenway, a corridor of state-owned parks running the entire length of the Willamette, was viewed as a way of preserving not only the lands but also the river. By placing land between sources of pollution and the Willamette, McCall and others envisioned an unprecedented state park of pristine, natural beauty (Serrill). The Willamette Greenway Proposal was written into law as the Willamette River Park System Act in June of 1967 and later revised to the Willamette Greenway Act.

The Legislative Assembly finds that, to protect and preserve the natural, scenic and recreational qualities of lands along the Willamette River, to preserve and restore historical sites, structures, facilities and objects on lands along the Willamette River for public education and enjoyment and to further the state policy established under ORS 390.010, it is in the public interest to develop and maintain a natural, scenic, historical and recreational greenway upon lands along the Willamette River to be known as the Willamette River Greenway.

(ORS 390.314(1), 1973)

The act also says that local governments will acquire land parcels when possible and convert them “for exclusive public use for scenic and recreational purposes” (ORS 390.330(1)).

With the Willamette Greenway Act in place, the legislature passed Senate Bill 10 in 1969. SB 10 put forth statewide zoning standards and required that every city and county in the state have plans that matched the standards. Unfortunately, SB 10 would

achieve little in its existence; no money was allocated to implement the zoning standards and no watchdog organization was created to monitor the implementation. Consequently, most cities and counties didn't develop any such plans. However, the triumphs and failures of SB 10 would later provide a template for a successful land use law.

Before such a law could be developed, Oregon voters put to vote and approved the Scenic Waterways Act in 1970. This act, citing the “outstanding scenic, fish, wildlife, geological, botanical, historic, archaeologic, and outdoor recreation values of present and future benefit to the public” found in and around the free-flowing rivers of Oregon and Waldo Lake, states that any construction along the rivers or at Waldo Lake needs to be “complemented by a policy that would preserve Waldo Lake and selected rivers or sections thereof in a free-flowing condition and would protect and preserve the natural setting and water quality of the lake and such rivers” (ORS 390.815, 1970). This act provided yet another tool for environmentalists to use in protecting the Willamette.

In 1971, Oregon legislature passed one of its most famous bills, HB 1036 or the “Bottle Bill.” Originally implemented to control litter problems, the bill placed five cent deposits on all carbonated and malt beverage containers. Despite heavy lobbying against it, HB 1036 passed by overwhelming margins of 54-6 and 22-8 in the House and Senate, respectively (“Bottle Bill Turns 30”). The effects of the bill were felt along the Willamette as containers previously left behind by river-goers were instead traded in by buyers or by “energetic collectors in search of easy cash” (Starbird, 827).

The hallmark of McCall's governorship and Oregon environmental law came in 1973. In the 1973 session, legislature passed SB 100. The Legislative Findings include

“uncoordinated use of lands within this state threaten the orderly development, the environment of this state and the health, safety, order, convenience, prosperity and welfare of the people of this state;” the need for a coordinated administration to review land use plans for compliance with goals; and local cities and counties should remain responsible for their local planning and enforcing except in the case of a conflict of interests with a coordinated statewide land conservation and development plan (ORS 197.005 (1-5)).

In order to assure the highest possible level of liveability in Oregon, it is necessary to provide for properly prepared and coordinated comprehensive plans for cities and counties, regional areas and the state as a whole (ORS 197.010(1))

Armed with this mission statement, SB 100 sought to build upon SB 10 and fix its deficiencies. The creation of the Department of Land Conservation and Development (DLCD), Land Use Board of Appeals (LUBA), Land Conservation and Development Commission (LCDC) and the Joint Legislative Committee on Land Use were all written into the bill so that there would be ample enforcement, infrastructure and citizen interaction where SB 10 lacked it. SB 100 also marked a national landmark as it was the first to write land use policy standards at the state level; previously, specific zoning and land use plans were developed at local levels. This plan is still recognized nationally as the most comprehensive land use planning process in use. The following year, after months of discussion, the LCDC and DLCD released Oregon’s Statewide Planning Goals, fourteen guidelines for land use planning in Oregon. Of these fourteen, seven applied to the Willamette with a fifteenth, titled “Willamette Greenway,” added in 1975. The other goals that pertained to the Willamette are: “Open Spaces, Scenic and Historic Areas, and Natural Resources”; “Air, Water and Land Resources Quality”; “Areas

Subject to Natural Disasters and Hazards”; “Recreational Needs”; “Economic Development”; and “Urbanization.” Since 1975, the goals have expanded to nineteen with “Estuarine Resources” pertaining to the Willamette (DLCD Goals). Then in 1975, Tom McCall and a young attorney named Henry Richmond founded 1000 Friends of Oregon. Originally serving as a watchdog for the implementation of SB 100, 1000 Friends has since expanded to “protect Oregon’s quality of life through the conservation of farm and forest lands, protection of natural and historic resources and promotion of more compact and livable cities” (www.friends.org). With the good intentions of SB 100 and a solid infrastructure with ample citizen enforcement, SB 100 was what Governor McCall was calling for when he originally issued Executive Order 67-2 back in 1967. However, SB 100 would continue to come under fire due to fear within local governments.

SB 100 was controversial as it made its way through the legislative process that year, with cities fearing the powers of counties, special districts fearing the powers of cities and counties, and all fearing the powers allocated to the State. (Toulon, 14)

This fear leaked down to citizens as well and 1976, 1978 and 1982 saw initiatives voted down that would have either repealed or substantially reduced the power of public agencies over land use.

The last decade has seen SB 100 constantly attacked but in different ways from the initiatives of the late 1970s and early 1980s. In 1993, legislature passed House Bill 3661, a bill that was originally viewed as a compromise between those on both sides of the land use debate. Anti-land use plan legislators wanted to zone farmland in Oregon for rural use while pro-land use plan legislators wanted to stick steadfastly to Goal 3, which

essentially stated that farmland was to be reserved for agricultural uses, regardless of the quality of the farmland. Anti-land use planners had long been trying to get LCDC to recognize “secondary” farmland as separate from “primary” farmland, a delineation not made in the original Statewide Planning Goals. However, in 1992 LCDC bowed to pressure and a secondary lands proposal was introduced to the 1993 session. After debate, a compromise was met; protection for the best lands would be increased, especially in the Willamette Basin, but more land divisions and development would be allowed elsewhere. Unfortunately, the weakening provisions had been written into the law while the strengthening power had been left to LCDC, which subsequently set an extremely high standard for applicants to build farmhouses on land. Fifteen months later, LCDC’s rules were being appealed by House Majority Leader Ray Baum and Lane County for giving protection to high value farmland. While the appeal would be upheld in 1996 in a Court of Appeals, the decision would be struck down in 1997 in the Supreme Court (“Making the Case...”). However, the message was now clear: anti-land use plan legislators would no longer leave SB 100 alone.

In both the 1995 and 1997 session, the legislature and Governor Kitzhaber managed to strike down all attacks on SB 100, mostly under threat of veto. In 1999 the legislature even passed a right-to-know law, called the Pesticide Use Reporting System (PURS). PURS would have tracked where pesticides enter the waterways; sadly, all funding for PURS was pulled in the 2003 session to save \$565,000. In that same session, the legislature and Governor Kulongoski passed laws that could result in paying out millions of dollars to polluters for simply obeying pollution laws(OCLV). While not

directly affecting the Willamette River, these are all attacks or attempts to undermine the Oregon law that currently protects the Willamette.

State of the River

Currently, SB 100, the landmark bill hailed across the country by environmentalists, is in trouble. The OLCV, while not giving glowing scores to Governor Kitzhaber, did give him better marks than Governor Kulongoski. The 2003 session produced one pro-environment law and five anti-environment laws, all signed off by Governor Kulongoski. This continues the trend seen in Oregon legislature over more than the last decade; it seems inevitable that SB 100 will come under direct attack again at some point, this time with legislative support. The disappointing aspect of this is that SB 100 was designed to have plenty of citizen interaction including land use proceedings and the State Citizen Advisory Committee. However, according to a report by the Committee on the Oregon Planning Experience (COPE), “one must be sufficiently sophisticated to know, assert, and use the many criteria that may be applicable to a case. One must have patience and financial resources to assure one can appeal a local government decision” (14). In addition, the legislature is wording ballot measures to confuse citizens further. Measure 56, adopted in 1998, requires individual notice to property owners if state or local governments undertake to change a plan or zoning designation. In Measure 58 was a requirement that in the individual notice the following text must appear: “Adoption of the rule may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property” (ORS 197.047(5)(b)). A statement such as this, often found to be misleading, has led to

resentment among the public against planning agencies (Touland, 15). Yet again, the legislature is trying to undermine the efforts of pro-environment law.

Trying to reverse this trend of undermining land use planning laws falls squarely on citizens. SB 100 is still Oregon law and written into this law are all the tools citizens need to make changes in land use planning. Effort must also be made in legislative elections. The OLCV has given failing marks to the legislature for every session since at least 1993, a trend that is as much the fault of the voting public as it is the collective legislature (OLCV). Awareness of who voters are choosing on their ballots and what they stand for will make a huge difference in maintaining a pro-environment stance in Oregon law. With a shift in legislature to the pro-land use planning side, we could also see a revival of the original intentions of SB 100; that is, active citizen involvement in the planning of land use. Educating the public on what they have the power to do in terms of public hearings and proceedings is the first step in getting them involved; awareness of dirty laws should follow.

The Willamette River Basin is in need of help in terms of cleanup and conservation. However, focused efforts on the Willamette will be difficult to sustain if the widespread feeling in Oregon law becomes one indifferent to land use planning and pollution.

Bibliography

- “Bottle Bill Turns 30.” DEQ: Land Quality.
<http://www.deq.state.or.us/wmc/solwaste/BottleBill30.HTML>. 3 Aug 2001. 20 May 2004.
- “DLCD Goals.” Oregon Department of Land Conservation and Development.
<http://www.lcd.state.or.us/goalhtml/goals.html>. 18 May 2004.
- “DLCD History.” Oregon Department of Land Conservation and Development.
<http://www.lcd.state.or.us/history.html>. 18 May 2004.
- “Governor Tom McCall: Biographical Note.” Oregon Secretary of State, Oregon State Archives. <http://arcweb.sos.state.or.us/governors/McCall/mccallbiography.htm>. 9 May 2004.
- “Making the Case Against Rural Sprawl.” 1000 Friends of Oregon.
<http://www.friends.org/issues/betrayal.html>. 18 May 2004.
- Oregon League of Conservation Voters. <http://www.olcv.org>. 14 May 2004.
- Senate Bill 10. State of Oregon, 55th Legislative Assembly – Regular Session 1969.
Oregon Department of Land Conservation and Development.
<http://www.lcd.state.or.us/history/senatebill10.pdf>. 18 May 2004.
- Serrill, W. Douglas. “A Brief History of Land Use Planning Along the Willamette River.” *Efforts to Preserve the Willamette River Greenway: A Case Study of the Riverfront Research Park*. <http://gladstone.uoregon.edu/~survival/rrpriver.html>. 9 May 2004.
- Starbird, Ethel. “A River Restored: Oregon’s Willamette.” *National Geographic*. 141 (1972): 816-835.
- Toulan, Dr. Nohad. “An Evaluation of Planning in Oregon: 1973 – 2001.” The Committee on the Oregon Planning Experience (COPE).
<http://www.oregonapa.org>: Nov 2001.
<http://www.oregonapa.org/COPEreport.pdf>